

EX PARTE OR LATE FILED



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REDACTED - FOR PUBLIC INSPECTION

Filing via Courier

EX PARTE

FILED/ACCEPTED

NOV 16 2007

Federal Communications Commission
Office of the Secretary

November 16, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

ORIGINAL

Re: In the Matter of Petition of Qwest Corporation for Waiver of Depreciation
Regulation Pursuant to 47 C.F.R. § 1.3 – WC Docket No. 05-259
Request for Confidential Treatment and Justification

Dear Ms. Dortch:

Qwest Corporation ("Qwest") hereby requests confidential treatment of certain information provided with the attached *ex parte* that responds to questions from the Federal Communications Commission's ("Commission" or "FCC") Wireline Competition Bureau Staff from a November 7, 2007 meeting concerning the above-referenced waiver petition. The attached *ex parte* ("*ex parte* response") is a letter from Philip E. Grate, Director-State and Federal Relations, Qwest to Marlene H. Dortch, Secretary, FCC in WC Docket No. 05-259.

The confidential information includes a reference (on page 4 of the *ex parte* response) as to the approximate write-off amount that Qwest will record, below-the-line, on its regulated books if the Commission grants its petition, effective January 1, 2008. The non-redacted version of the *ex parte* response with the figure included has been marked "**CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**". Qwest requests that the non-redacted, confidential version of this *ex parte* response be withheld from public inspection.

Qwest considers the confidential information referenced in the preceding paragraph (and delineated in the non-redacted version of the *ex parte* response -- pertaining to specific financial and regulatory net book cost data -- to be confidential. This information is confidential financial information that is "not routinely available for public inspection." As such, Qwest requests confidential treatment of this information and is filing a non-redacted version of the submission pursuant to both FCC rules 47 C.F.R. §§ 0.457(d) and 0.459. Pursuant to Commission rule, 47 C.F.R. § 0.459(b), Qwest provides justification for the confidential treatment of this information in the Appendix to this letter.

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Ms. Marlene H. Dortch
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Qwest is simultaneously submitting, under separate covers, both a non-redacted version of this *ex parte* (that is, the response with the confidential information inserted in the text) and a redacted version, with the confidential information omitted, which is marked "**REDACTED -- FOR PUBLIC INSPECTION**". Both the redacted and non-redacted versions of the *ex parte* response are being served on Staff of the Commission's Wireline Competition Bureau as indicated below.

Included with both the non-redacted and redacted submissions is the same copy of this letter from Timothy M. Boucher, Corporate Counsel, Qwest to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 15, 2007 (except that the markings have been adjusted to reflect either the public or confidential version). This confidentiality request/justification contains no confidential information. Only the attached Grate letter contains confidential information (on page 4 -- *that is, the non-redacted version*). For the non-redacted version, Qwest is submitting an original and one copy, along with a second copy, to be stamped and returned to the courier. For the redacted version, Qwest is submitting an original and four copies, along with a fifth copy, to be stamped and returned to the courier.

If you have any questions concerning this submission, please call me on 303-383-6608.

Sincerely,

/s/ Timothy M. Boucher

Attachments

Copy (via e-mail) to:

Dana Shaffer (Dana.shaffer@fcc.gov)
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APPENDIX

Confidentiality Justification

Qwest requests confidential treatment of certain information provided in its responses to FCC Wireline Competition Bureau Staff questions (“*ex parte* response”), as appended in the *ex parte* from Philip E. Grate, Director-State and Federal Relations, Qwest to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, dated November 16, 2007. This information is confidential financial information that is not routinely made available for public inspection. Such information should be afforded confidential treatment under both 47 C.F.R. § 0.457(d) and § 0.459.

47 C.F.R. § 0.457(d)

Information in the *ex parte* response is confidential and proprietary to Qwest as “commercial or financial information” under Section 0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary financial information. Therefore, in the normal course of Commission practice this information should be considered “Records not routinely available for public inspection.”

47 C.F.R. § 0.459

Specific information in the *ex parte* response is also subject to protection under 47 C.F.R. § 0.459, as demonstrated below.

Information for which confidential treatment is sought

Qwest requests that the confidential information contained in the *ex parte* response (on page 4 -- that is, of the non-redacted version) be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. This information is competitively sensitive financial information which Qwest maintains as confidential and is not normally made available to the public. Release of the information could have a substantial negative competitive impact on Qwest. The confidential information is contained in the non-redacted version of Qwest’s *ex parte*, which is marked with the following legend: **CONFIDENTIAL – NOT FOR PUBLIC INSPECTION**.

Commission proceeding in which the information was submitted

The information is being submitted *In the Matter of Petition of Qwest Corporation for Waiver of Depreciation Regulation Pursuant to 47 C.F.R. § 1.3* – WC Docket No. 05-259.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

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The financial information designated as confidential is commercial and financial information in the form of detailed financial and regulatory net book cost data. As noted above, the data is commercially and financially-sensitive information which is not normally released to the public. As such, release could have a substantial negative competitive impact on Qwest.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

The type of competitively sensitive financial information in the *ex parte* response would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), which demonstrates that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. Qwest confirms that release of its confidential and proprietary information would cause it competitive harm by allowing its competitors to become aware of sensitive proprietary financial information regarding the operation of Qwest's business.

Measures taken by Qwest to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

Qwest has treated and treats the information disclosed in its non-redacted *ex parte* as confidential and has protected it from public disclosure to parties outside of the company.

Justification of the period during which Qwest asserts that the material should not be available for public disclosure

Qwest cannot determine at this time any date on which this information should not be considered confidential or would become stale for purposes of the current proceeding, except that the information would be handled in conformity with general Qwest records retention policies, absent any continuing legal hold on the data.

Other information that Qwest believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable Commission and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.



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Philip E. Grate
Director – State and Federal Relations

EX PARTE

Filing via courier

November 16, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *In the Matter of Petition of Qwest Corporation for Waiver of Depreciation
Regulation Pursuant to 47 C.F.R. § 1.3 – WC Docket No. 05-259*

Dear Ms. Dortch:

On November 7, 2007, Qwest Corporation (“Qwest”) representatives met with Dana Shaffer, Chief, Wireline Competition Bureau, and various members of her staff to discuss Qwest’s petition for waiver of depreciation regulation. During the course of this meeting, questions arose concerning the following: (1) whether a grant of the waiver petition would have an impact on the rates that Qwest charges its customers; (2) in the event Qwest’s waiver is granted, what is the practical effect, if any, of the fact that there are currently large differences in net book costs for three large plant accounts (*i.e.*, between Qwest’s financial books and its regulated books); and (3) why it is in the public interest to grant Qwest’s waiver. Qwest addresses these questions in this response.

Potential Rate Impact

For the reasons stated below, Qwest does not anticipate any regulated rate changes as a result of a grant of its waiver.

With respect to its interstate rates subject to price cap regulation, Qwest’s rates are governed by the price cap mechanism and are, with few exceptions, not affected by changes in depreciation or other expenses. Qwest could change its price cap rates as a result of changes in depreciation rates and associated write-offs through exogenous cost changes, a low-end adjustment or an above-cap filing. However, with a grant of its waiver petition, Qwest would be voluntarily committing to the following four conditions set forth in the Commission’s 1999 *USTA Depreciation Order*:

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Specifically, we find that such a waiver may be approved when an incumbent LEC [local exchange carrier], voluntarily, in conjunction with its request for waiver: (1) adjusts the net book costs on its regulatory books to the level currently reflected in its financial books by a below-the-line write-off; (2) uses the same depreciation factors and rates for both regulatory and financial accounting purposes; (3) foregoes the opportunity to seek recovery of the write-off through a low-end adjustment, an exogenous cost adjustment, or an above-cap filing; and (4) agrees to submit information concerning its depreciation accounts, including forecast additions and retirements for major network accounts and replacement plans for digital central offices.¹

Pursuant to the first condition, Qwest would be required to adjust the net book costs on its regulatory books to reflect the level on its financial books through a below-the-line write-off.² Such a write-down might normally be amortized over a number of years and affect a carrier's return, possibly triggering a low-end adjustment and above-cap filing. However, this is not possible under the Commission's waiver requirements. Nor is it possible for Qwest to recover some portion of the write-off through an exogenous cost adjustment. The Commission's third waiver condition specifically requires that a price cap LEC seeking a depreciation waiver "forgo" the opportunity to seek recovery of the write-off through a low-end adjustment, an exogenous adjustment, or an above-cap filing.³ Moreover, since Qwest has qualified for pricing flexibility, Qwest can, in any event, no longer seek recovery of increased costs through a low-end adjustment or an above-cap filing.⁴

With regard to new regulated interstate services that have not yet been rolled into price cap regulation,⁵ Qwest would anticipate establishing rates based on existing market conditions. Costs, including depreciation expense, are only a factor to be considered in establishing price

¹ *In the Matter of 1998 Biennial Regulatory Review -- Review of Depreciation Requirements for Incumbent Local Exchange Carriers, United States Telephone Association's Petition for Forbearance from Depreciation Regulation of Price Cap Local Exchange Carriers*, Report and Order in CC Docket No. 98-137, Memorandum Opinion and Order in ASD 98-91, 15 FCC Rcd 242, 252-53 ¶ 25 (1999) ("*USTA Depreciation Order*") (footnotes omitted).

² *Id.*

³ *Id.*

⁴ Finally, Qwest notes that, in the *USTA Depreciation Order*, the Commission concluded that satisfaction of the four waiver requirements was sufficient to "mitigate [its] concerns about the adverse impacts that could occur when carriers are given the freedom to select their own depreciation lives and procedures." *Id.* at 257-58 ¶ 35.

⁵ New services are usually rolled into price caps and become subject to price cap regulation approximately one year after they have been introduced. Additionally, as noted in n.104 of the *USTA Depreciation Order*, the new services test has been eliminated for all new services except loop-based services.

floors. The depreciation rates that Qwest would employ to establish price floors for new services would be the same rates that it uses for generally accepted accounting principles ("GAAP") purposes, as is required by the Commission's second waiver condition.⁶ The prices for new services are subject to the Commission's tariff review process and the Commission has the authority to reject a tariff if it determines the tariff is unjust and unreasonable, regardless of the cause. The Commission's tariff rules thus provide more than adequate protection to guard against the possibility that Qwest may employ what the Commission deems to be unreasonable depreciation rates to establish price floors for new services. The Commission addressed new services in the *USTA Depreciation Order*. As described above, the Commission's fourth waiver condition requires carriers to continue to provide information on network retirements and modernization plans. In the *USTA Depreciation Order*, the Commission concluded that, as result of this condition, it would have sufficient information to "ensure that carriers have based their proposed prices for new services on realistic depreciation factors."⁷

Qwest has also demonstrated in its prior filings that state law and state regulators control state rates and that a grant of Qwest's depreciation waiver, in and of itself, should have no impact on intrastate rates. Qwest has acknowledged that it is trying to move to one set of depreciation rates throughout its 14-state service area and that a number of these states allow Qwest to use the Commission's depreciation rates. However, even though Qwest may be using identical depreciation rates for reporting purposes in some of its states, it is quite clear that the states have adequate authority to prescribe whatever depreciation rates that they determine are necessary for state ratemaking purposes.⁸ Qwest would hope that state regulators would adopt GAAP depreciation rates for state purposes but they have no obligation to do so.

⁶ *Id.* at 252-53 ¶ 25.

⁷ *Id.* at 259 ¶ 39. A very small number of Qwest's regulated interstate services have never been subject to price cap regulation. Some of these services are advanced services sold under Phase I Pricing Flexibility and most of these services will be de-tariffed in the event Qwest's pending Petition for Forbearance with respect to broadband services is granted. See *In the Matters of Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under Section 47 U.S.C. § 160 (c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, WC Docket No. 06-125. Memorandum Opinion and Order, FCC 07-180, rel. Oct. 12, 2007, *appeals pending sub nom. Ad Hoc v. FCC*, D.C. Cir. No. 07-1426 (and cons. cases). Because pricing for these non-price cap services is set in a highly competitive environment, it is not driven by consideration of historical depreciation costs. In any event, for Qwest to change the rates of these services based on changes in depreciation rates, Qwest would have to revise its existing tariffs. As with tariff filings for new services, such tariff revisions would be subject to the tariff review process and would not take effect until Qwest complied with all relevant tariff rules.

⁸ See *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986).

Another conceivable "rate" concern is that a grant of Qwest's waiver might affect unbundled network elements ("UNE") /interconnection rates or universal service high cost support. To begin with, UNE rates are not based on the net plant balances or depreciation expense on Qwest's books. Instead, they are based on estimates of the cost of a hypothetical and newly installed network. One of those estimated costs is depreciation expense. However, the depreciation used for these rates is not what is recorded on a price cap incumbent LEC's books. For UNEs, the depreciation expense used is that determined by a state regulatory commission, after consideration of evidence regarding the depreciation expense that a hypothetical, completely new network would experience. Similarly, universal service high cost support for non-rural price cap incumbent LECs such as Qwest is calculated using forward-looking cost models. In any event, the Commission addressed these issues in the *USTA Depreciation Order* as well when it concluded that, as long as carriers continued to provide the information required by the fourth waiver condition, the Commission would be able to "assure that any increase in depreciation expense will not have a harmful effect on consumers or competition in rates using reported costs or forward-looking cost models."⁹

In summary, Qwest does not anticipate any regulated rate changes as a result of a grant of its waiver. Waiver would allow Qwest to use a single set of depreciation rates -- GAAP rates -- that are updated on an annual basis to reflect changes in service lives and other depreciation parameters. If a grant of Qwest's waiver results in some unanticipated rate impacts at some time in the future or any other "unintended consequences," the Commission has adequate authority to take any action it might deem necessary.

Account Level Impacts of Write-off Upon Grant of Waiver

All of the comments in the section above are true despite the fact that, in accomplishing the below-the-line net plant write-off required as a condition of the waiver, there will be, at an underlying account-level, a write-on of net plant in some plant categories and a write-off of net plant in other plant categories. Nor does it matter that there are currently large differences in net book costs for three large plant accounts.

As explained above, the Commission, in the *USTA Depreciation Order*, determined that it would be appropriate to grant a waiver of its depreciation prescription process for certain price cap incumbent LECs when the carrier, voluntarily, in conjunction with its request for waiver, agrees to the four conditions outlined on page 2, above.

If the Commission grants Qwest's petition effective January 1, 2008, Qwest, in satisfaction of the first waiver condition, will record a below-the-line write-off of approximately *** **Begin Confidential***** *****End Confidential***** million on its regulated books. In

⁹ *USTA Depreciation Order*, 15 FCC Rcd at 257 ¶ 34.

performing this below-the-line write-off, some of Qwest's 34 plant categories will experience a write-on of net plant while others will experience a write-off of net plant.¹⁰

As described above, Qwest does not anticipate any regulated rate changes as a result of a grant of its waiver. This conclusion applies equally to cost changes in aggregate and cost changes at the plant category level (*i.e.*, a change in depreciation expense or depreciation reserve in any particular plant category as needed to satisfy the waiver conditions -- whether an increase or decrease and regardless of the size of the increase or decrease).

The Public Interest

On numerous occasions since the Commission adopted its *Depreciation Simplification Order* in 1993,¹¹ the Commission has acknowledged that its depreciation rules are overly-complex and that depreciation reform would serve the public interest. The move to simplify the depreciation process gained momentum in 1996 when Section 220(b) of the Telecommunications Act was amended. This change allowed the Commission the discretion to prescribe depreciation rates "for such carriers as it determines to be appropriate" rather than requiring the Commission to prescribe depreciation rates.¹²

In the 1999 *USTA Depreciation Order*, the Commission significantly streamlined depreciation requirements for price cap carriers while denying USTA's petition requesting that the Commission forbear from subjecting price cap LECs to depreciation regulation.¹³ In rejecting the USTA forbearance petition at that time, the Commission found that "forbearing from depreciation prescription where the potential result is higher rates is not in the public interest."¹⁴ At the same time, the Commission addressed the possibility of price cap carriers charging higher rates as a result of exogenous adjustments and above-cap filings and higher interconnection and UNE rates. The Commission also established the waiver process that is the basis of Qwest's petition and which allows price cap LECs to "obtain substantially the same regulatory relief from depreciation requirements [as forbearance] if certain conditions are met."¹⁵

¹⁰ Qwest has demonstrated, in prior written filings, the entries it would make to its books in order to bring its MR books in line with its FR books. *See* Letter to Ms. Marlene H. Dortch, Federal Communications Commission, from Mr. Ed Henry, Qwest, WC Docket No. 05-259, dated Dec. 1, 2005.

¹¹ *In the Matter of Simplification of the Depreciation Prescription Process*, CC Docket No. 92-296, Report and Order, 73 Rad. Reg. 2d (P&F) 1275, rel. Oct. 20, 1993.

¹² 47 U.S.C. § 220(b).

¹³ *USTA Depreciation Order*, 15 FCC Rcd at 243 ¶ 2.

¹⁴ *Id.* at 268-69 ¶ 63.

¹⁵ *Id.* at 243 ¶ 2. "Using the waiver process, rather than forbearance from our rules, will provide carriers the opportunity to free themselves of depreciation regulation while providing safeguards

Qwest believes that, collectively, these and other prior Commission rulings make clear that a grant of its waiver request would serve the public interest of eliminating unnecessary, overly complex and costly depreciation regulation. Indeed, Qwest believes that compliance with the four waiver conditions set forth in the *USTA Depreciation Order* ensures that waiver of the depreciation rules will be in the public interest and that competitors and consumers will be protected from adverse effects. In establishing the waiver criteria, the Commission essentially established the parameters that a price cap LEC, such as Qwest, must meet to demonstrate that a waiver of the depreciation rules is in the public interest.¹⁶ In its waiver petition and in subsequent *ex partes*, Qwest has shown how it intends to satisfy these requirements upon waiver of the Commission's depreciation rules. As such, the Commission should find that a grant of Qwest's petition is in the public interest.

As noted in the *USTA Depreciation Order*, any waiver request must also comply with Section 1.3 of the Commission's rules which allows the Commission to waive its rules if "good cause is ... shown."¹⁷ This test requires that the Commission find that "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."¹⁸ If the Commission's above four conditions are satisfied, a grant of Qwest's petition will serve the public interest. Satisfaction of these conditions along with the fact that Qwest is subject to price cap regulation constitute "special circumstances" that warrant waiver of the Commission's depreciation rules. The Commission's depreciation rules were established when virtually all incumbent LECs were subject to some form of rate-of-return regulation to protect consumers from unreasonable rates. Under price cap regulation, they are no longer necessary. These facts, together with the Commission's long-stated goal of completing depreciation reform that would eliminate its overly complex depreciation rules and Qwest's demonstration of the cost and

against the adverse effects that unrestricted changes in depreciation rates could have on competition and consumers."

¹⁶ For example in discussing the third waiver requirement, the Commission stated: "If, as a condition for obtaining a waiver, an incumbent LEC voluntarily forgoes any opportunity to assert such claims [a low-end adjustment, an exogenous adjustment or an above-cap filing] in connection with this adjustment to its regulatory net book costs, then our concerns would be mitigated and we could conclude that a waiver of our rules is consistent with the *public interest*." [Emphasis added.] *Id.* at 254 ¶ 27.

¹⁷ *Id.* at 252-53 ¶ 25; see also 47 C.F.R. § 1.3.

¹⁸ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) and *Northeastern Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Also see *In the Matter of United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules*, Order, 13 FCC Rcd 214 (1997).

burden entailed in complying with the Commission's depreciation rules at issue,¹⁹ assure that a grant of Qwest's waiver would serve the public interest.

This conclusion is not changed by the fact that a grant of Qwest's waiver would also require that Qwest adopt Statement of Financial Accounting Standards ("SFAS") 143 in dealing with cost of removal. The Commission's above public interest standard was adopted prior to the issuance of SFAS 143 and the Commission's subsequent *Order* directing incumbent LECs not to adopt SFAS 143.²⁰ Notably, in the latter, the Commission did not find at that time that allowing a carrier to adopt SFAS 143 would not be in the public interest. Instead, the Commission found that SFAS 143 "would conflict with the Commission's current accounting rules" and notified affected carriers that they should not adopt SFAS No. 143 for federal regulatory accounting purposes.²¹ The Commission also stated that implementation of SFAS 143 "could require revision of prescribed depreciation rates."²²

Qwest's proposed waiver request does incorporate the effect of SFAS 143 which Qwest adopted for financial reporting purposes as of January 1, 2003. Under SFAS 143, the normal cost of removal is charged to expense (*i.e.*, at the time of removal) while the Part 32 rules basically require that the cost of removal (less the salvage value) be depreciated over the life of the equipment. Qwest acknowledged this conflict in its waiver petition and requested that the Commission waive Sections 32.2000(g)(2)(ii) and 32.3100(c) in order to allow Qwest to adjust its regulatory books to agree with its financial books.²³ As Qwest notes in its petition, this was

¹⁹ See Letter to Ms. Marlene H. Dortch, Federal Communications Commission from Mr. Philip E. Grate, Qwest, WC Docket No. 05-259, dated Sept. 6, 2007.

²⁰ See *In the Matter of Statement of Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 143, Accounting for Asset Retirement Obligations*, Order, 17 FCC Rcd 25552 (2002) ("SFAS 143 Order").

²¹ Section 32.2000(g)(2)(ii) requires companies to account for the cost of asset retirements as part of the net salvage estimates included in the calculation of depreciation rates and costs associated with cost of removal are charged to Account 3100(c). See 47 C.F.R. § 32.3100(c). Under SFAS No. 143, the normal cost of removal is charged to expense. In addition, to the extent that a legal obligation exists to remove an asset, SFAS No. 143 requires that the fair value of the obligation be capitalized as part of the carrying value of the asset and depreciated over the remaining life of the asset.

²² See *SFAS 143 Order*, 17 FCC Rcd at 25552-53 ¶ 3.

²³ Qwest waiver petition at 1-3, 9 and Attachment C, Declaration of R. William Johnston. As Mr. Johnston states in his declaration, "Qwest's proposed waiver request incorporates the effects of numerous statements of SFAS and GAAP that have not been adopted for federal regulatory accounting purposes including SFAS Nos. 142, 143 and 144." *Id.* at 1. See also, waiver petition at Attachments I, J and K, Letters from Mr. Ed Henry, Director -Finance, Qwest to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, dated April 12, 2006, June 1, 2006, and Oct. 4, 2006, respectively.

Ms. Marlene H. Dortch
November 16, 2007

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necessary to satisfy the Commission's first waiver condition (requiring a carrier to adjust the net book costs on its regulatory books to the level currently reflected in its financial books by a below-the-line write-off). Also, in order to comply with the second waiver condition (requiring that carriers use the same depreciation factors and rates for both regulatory and financial accounting purposes), Qwest must implement SFAS 143 for regulatory purposes.

The fact that SFAS 143 was released after the Commission adopted the above depreciation waiver requirements in the *USTA Depreciation Order* and that the Commission ordered incumbent LECs not to adopt SFAS 143 for regulatory accounting purposes should not be a concern. The *USTA Depreciation Order* does not set forth specific Part 32 accounting rules that would be waived or the specific rules that price cap LECs would be required to follow after grant of a waiver. Instead, the Commission concluded that it would be appropriate to grant a waiver if a price cap LEC satisfied the Commission's waiver standard.

Additionally, in adopting the waiver conditions in its *USTA Depreciation Order*, the Commission was well-aware of the possibility that SFAS 143 and other Statements of Financial Accounting Standards under consideration might be adopted. The fact that the Commission established conditions that must be satisfied prior to the grant of a waiver -- rather than identifying specific rules to be waived -- provides sufficient flexibility to accommodate continuing changes in GAAP.

As noted above, compliance with these conditions also ensures that a waiver is in the public interest and this is true even if a price cap LEC, such as Qwest, uses SFAS 143 for regulatory purposes after waiver of all necessary depreciation rules. Furthermore, Qwest recently demonstrated that, notwithstanding the adoption of SFAS 143, there is no possibility of harm to consumers (*i.e.*, after grant of Qwest's waiver petition) through double recovery of costs.²⁴ Accordingly, the Commission should find that Qwest's implementation of SFAS 143 for regulatory accounting purposes is consistent with the public interest because consumers and competitors will be protected from adverse impacts (*i.e.*, if the Commission's waiver requirements are satisfied) and Qwest will be allowed to further simplify its depreciation and accounting procedures.

Sincerely,

/s/ Phil Grate

²⁴ See Qwest *ex parte*, dated Sept. 6, 2007 at 3-5.